

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 18-25—sHB 5429

Finance, Revenue and Bonding Committee

AN ACT CONCERNING INCREASED PENALTIES FOR CERTAIN CIGARETTE AND TOBACCO TAX VIOLATIONS, A CONTINUING EDUCATION OPTION FOR CERTAIN EMBALMERS OR FUNERAL DIRECTORS AND THE IMPOSITION OF THE TOBACCO PRODUCTS TAX ON CIGARS

SUMMARY: This act increases civil and criminal penalties for various offenses related to cigarette and tobacco products sales.

Among other things, the act increases, from a class D to a class C felony (see Table on Penalties), the penalties for:

1. repeat violations of the cigarette shipment or transport law;
2. willful attempt to evade cigarette taxes or failure to pay the taxes on 20,000 or more cigarettes;
3. illegal sales of untaxed tobacco products that would be taxed at least \$2,500 and willful attempt to evade tobacco products taxes or failure to pay tobacco product taxes of \$2,500 or more; and
4. willful delivery or disclosure to the Department of Revenue Services (DRS) of fraudulent or false cigarette or tobacco products tax documents.

The act (1) expands the definition of racketeering activity under the Corrupt Organizations and Racketeering Act (CORA) to include willfully attempting to evade cigarette taxes or failing to pay the taxes on 20,000 or more cigarettes and (2) removes from the definition possessing, transporting for sale, selling, or offering for sale 20,000 or more cigarettes in certain stamped or illegally stamped packages.

The act also (1) exempts from the tobacco products tax cigars that are exported from Connecticut and owned by a distributor located on the premises of a company performing “fulfillment services” for the distributor and (2) changes the point at which cigars owned by such distributors are subject to the tax if they are shipped, delivered, or transferred to a Connecticut address.

Lastly, under specified conditions, the act allows funeral directors and embalmers whose national board examination scores were invalidated to complete 45 extra hours of continuing education, instead of retaking the examination, in order to avoid disciplinary action.

EFFECTIVE DATE: July 1, 2018, except the funeral director and embalmer provisions are effective upon passage.

§ 1 — ILLEGALLY SHIPPING OR TRANSPORTING CIGARETTES

The act increases, from a class D to a class C felony, the penalty for second or

subsequent violations of the cigarette shipping and transporting law. The law:

1. prohibits companies that sell cigarettes from shipping them to anyone in Connecticut who is not (a) a state-licensed cigarette distributor or dealer, (b) an export warehouse proprietor or customs bonded warehouse operator, or (c) a local, state, or federal government employee, officer, or agent acting within his or her official duties;
2. prohibits common or contract carriers or anyone else from knowingly delivering cigarettes to a residence or to someone in Connecticut they reasonably believe is not one of the entities authorized to receive them;
3. requires sellers to plainly and visibly mark packages with the word “cigarettes” when they do not ship them in the cigarette manufacturer’s original container or wrapping; and
4. requires sellers shipping cigarettes to make delivery to an authorized recipient conditional on the recipient’s signing an acknowledgement of receipt and presenting proper proof of age.

By law, unchanged by the act, a first violation of these provisions is a class A misdemeanor and any cigarettes sold in violation of this law are contraband and subject to confiscation.

The act also increases, from \$5,000 to \$10,000, the maximum civil penalty the DRS commissioner may impose for each shipment or delivery of cigarettes that violates these provisions.

§ 2 — SALE OF CIGARETTES OR TAXED TOBACCO PRODUCTS WITHOUT A DRS LICENSE

The act increases the penalties for selling, offering to sell, or possessing with intent to sell cigarettes or taxed tobacco products without a license from DRS. Taxed tobacco products include snuff, cigars, cheroots, pipe tobacco, and similar products.

Under prior law, the penalty for each knowing violation was a fine of up to \$500, up to three months in prison, or both. The act increases the penalty to a fine of up to \$1,000, up to six months in prison, or both. As under existing law, each day of unauthorized operation may be counted as a separate offense.

In the case of a cigarette dealer who operates for up to 90 days after his or her license expires, the act increases the penalty from an infraction, with a \$90 fine, to a \$350 fine.

§ 3 — SALE OF UNSTAMPED CIGARETTES

By law, it is generally illegal to sell, offer or display for sale, or possess with intent to sell cigarettes without the required Connecticut tax stamp. The act additionally makes it illegal to transport cigarettes for sale under these same conditions.

Under prior law, the penalty for any knowing violation of the stamp requirements was a fine of up to \$1,000, up to a year in prison, or both (except for certain licensed dealers, as described below). The act increases the penalty for knowing violations involving more than 1,000 cigarettes. Under the act, the

penalty is:

1. a fine of up to \$1 per cigarette, up to a year in prison, or both, if the violation involves 1,001 to 19,999 unstamped cigarettes and
2. a fine of up to \$1.50 per cigarette, up to five years in prison, or both, if the violation involves 20,000 or more unstamped cigarettes.

Under prior law, possessing, transporting for sale, selling, or offering for sale 20,000 or more cigarettes (1) in unstamped or illegally packaged stamped packages or (2) that may not legally be stamped, was a class D felony (see Table on Penalties).

Under the act, if it is a licensed dealer's first violation and he or she possesses no more than 1,000 unstamped cigarettes, the penalty is reduced to a \$350 fine. Under prior law, this reduced penalty was an infraction with a \$90 fine and applied in cases where such dealers possessed no more than 600 unstamped cigarettes.

The act also increases, from a class D to a class C felony, the penalty for willfully attempting to evade cigarette taxes or failing to pay the taxes on 20,000 or more cigarettes.

§§ 4 & 7 — CIGARETTE OR TOBACCO PRODUCTS TAX FRAUD

The act increases, from a class D to a class C felony, the penalty, under both the cigarette and tobacco products tax laws, for willfully delivering or disclosing to the DRS commissioner any list, report, account, statement, or other document known to be fraudulent or false in any material matter. This penalty is in addition to any other penalty the law provides.

§ 5 — CIGARETTE PACKAGING VIOLATIONS

The law prohibits the sale of cigarettes in any form other than in sealed packages of 20 or more that bear the federally required health warning (i.e., loose cigarettes). The act increases the civil penalty for violations of this law from (1) \$50 to \$150 for a first offense, (2) \$250 to \$500 for a second offense, and (3) \$500 to \$1,000 for a third or subsequent offense. It also subjects any violators, rather than just dealers and distributors, to the penalty. But as under existing law, dealers and distributors who violate these provisions are subject to license suspension or revocation.

The act also deems any cigarettes sold in violation of this law to be contraband and subject to confiscation.

§ 6 — SALE OF UNTAXED TOBACCO PRODUCTS

By law, anyone, other than a licensed distributor or importer, who knowingly manufactures, buys, imports, receives, or acquires any untaxed tobacco products is subject to a fine, up to three months in prison, or both, for each offense. The act increases the maximum fine from \$500 to \$750.

The act also increases, from a class D to a class C felony, the penalty for (1) transporting for sale, selling, or offering for sale untaxed tobacco products that

would be taxed at least \$2,500 or (2) willfully attempting to evade the tobacco products tax or failing to pay the taxes on products that would be taxed at least \$2,500.

§ 8 — RACKETEERING ACTIVITY

The act expands the definition of racketeering activity under CORA to include willfully attempting to evade cigarette taxes or failing to pay the taxes on 20,000 or more cigarettes. In doing so, it subjects a person or entity that engages in a pattern of this violation to prosecution under CORA. The act also removes from the definition of racketeering activity possessing, transporting for sale, selling, or offering for sale 20,000 or more cigarettes (1) in any unstamped or illegally packaged stamped packages or (2) that the law prohibits from bearing a tax stamp (see § 3 above).

CORA subjects violators to (1) one to 20 years in prison, a fine of up to \$25,000, or both; (2) forfeiture of property acquired, maintained, or used in violation of CORA, including profits, appreciated value, and sale proceeds; and (3) forfeiture of any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise the violator established, operated, controlled, conducted, or participated in to violate CORA. Violators are also subject to the fines and penalties associated with the underlying crimes.

§ 9 — FUNERAL DIRECTORS AND EMBALMERS

The act expands the circumstances under which funeral directors and embalmers are protected from disciplinary actions based on the invalidation of their national board examination score.

Existing law prohibits the Department of Public Health (DPH) and the Connecticut Board of Examiners of Embalmers and Funeral Directors from taking disciplinary action against any funeral directors or embalmers notified on or before October 1, 2017, that their scores were invalidated, if the licensee retakes and passes the exam by October 1, 2018.

The act additionally prohibits DPH or the board from taking related disciplinary action against any such individual who completes 45 hours of continuing education and submits certificates of course completion to DPH by July 1, 2019. These 45 hours of continuing education must be in addition to the standard continuing education requirement for these professions (six hours annually).

At least six of the 45 hours must be in ethics, and the remainder must be in areas related to the licensee's practice, such as bereavement care, business management and administration, religious customs and traditions related to funerals, cremation or cemetery services, natural sciences, pre-need services, restorative arts and embalming, counseling, funeral service merchandising, sanitation and infection control, organ donation, or hospice care. The continuing education must consist of courses offered or approved by the Academy of Professional Funeral Service Practice, educational offerings sponsored by a

licensed health care institution, or courses offered by a regionally accredited higher education institution.

Under prior law, if a licensee with such an invalidated score failed to retake and pass the exam by October 1, 2018, his or her license was annulled, subject to the Uniform Administrative Procedure Act. Under the act, this penalty applies if the licensee fails to retake the exam by that date or complete the 45 hours of continuing education by July 1, 2019.

§ 10 — FULFILLMENT HOUSE EXEMPTION FOR CERTAIN EXPORTED CIGARS

The act exempts from the tobacco products tax cigars that are (1) exported from Connecticut and (2) owned by a distributor located on the premises of a company performing “fulfillment services” for the distributor. A company provides “fulfillment services” when it receives orders from a distributor or its agent, fills them with the distributor's inventory stored on its premises, and ships them to the distributor's customers. Under prior law, all tobacco products were subject to the tax at the time they were manufactured, purchased, imported, received, or acquired in the state. By law, exported tobacco products are exempt from the tobacco products tax and any taxes paid on such products may be refunded.

Under the act, cigars owned by such distributors are subject to the tax if they are shipped, delivered, or transferred to a Connecticut address. The tax must be (1) imposed on the date the cigars are shipped, delivered, or transferred and (2) reported and paid on the tobacco products tax return corresponding to the month the shipment, delivery, or transfer occurred.

The act authorizes the DRS commissioner to require the fulfillment company to file a quarterly informational return, containing the information the commissioner prescribes, for the cigars located on the company's premises.